IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 37 OF 2001

SMT. ANJANI MOLU DESSAI
r/o Culwado, Cuncolim,
Salcete, Goa. ... Appellant

versus

1. STATE OF GOA
through the Special
Land Acquisition Officer,
South Goa, K.R.C.I.,
Amey Guest House,
Davorlim Road,
P.O. Navelim, Salcete,
Goa, 403 707.

2. KONKAN RAILWAY CORPORATION
LTD., through the Chief
Engineer, with office at
4th floor, Souza Towers,
Church Square, Panaji,
Goa, 403 001. ... Respondents

Mr. Sudesh Usgaonkar, Advocate for the Appellant.

Ms. Winnie Coutinho, Government Advocate for Respondent No.1.

Mr. Emerico Afonso, Advocate for Respondent No.2.

CORAM : S. A. BOBDE &
N. A. BRITTO,JJ.

DATE : 3RD AUGUST, 2004.

ORAL JUDGMENT(PER N.A.BRITTO,J.)

The unsuccessful Applicant in Land Acquisition Case No.285 of 1994 (Applicant, for short) has filed the

present Appeal against Judgment/Award dated 10th August, 2000, of the learned Additional District Judge, South Goa, Margao.

2. Some facts are required to be stated to dispose off the present Appeal.

3. By virtue of Notification issued under Section 4 of the Land Acquisition Act, 1894, published on Official Gazette dated 27th June, 1991, the Government acquired an area of about 3,65,375 sq. metres in Village Balli of Quepem Taluka for the purpose of a new broad-gauge line of Konkan Railway and in that was included a large area jointly owned by the Applicant and one Sitakant M. Gharse and the exact area of which appears to be in dispute.

4. According to Mr. Emerico Afonso, learned Counsel appearing on behalf of the Respondent No.2, the total area acquired belonging to both of them is 81,618 sq. metres out of which 21,162 sq. metres belonged to the said Gharse while 60,455.50 sq. metres belonged to the said Applicant.

5. However, According to Mr. Sudesh Usgaonkar, learned Counsel appearing on behalf of the said Applicant, the total area acquired was 81,618 sq. metres and 60,343 sq. metres belonged to the said Applicant.

6. We find from the record of the learned Trial Court that the Applicant had filed an application stating that the total area belonging to the said Sitakant M. Gharse was 25,361 sq. metres while the total area belonging to the said Applicant was 63,464 sq. metres. It appears that even the expert examined on behalf of the said Applicant before the learned Reference Court was confused not knowing what was the total area which belonged to the Applicant and the said Gharse in the present acquisition.

7. By virtue of Award dated 7th December, 1993, the learned Land Acquisition Officer fixed the compensation payable at the rate of Rs.12/- per sq. metre in respect of bharad/garden land and Rs.6/- per sq. metre for untenanted paddy/rice fields. In fixing the said compensation, the learned Land Acquisition Officer took into consideration four Sale Deeds, two of which were produced by the Mamlatdar and the other two produced by one Vital G. Kamat. The first Sale Deed was dated 30th August, 1989 by which 2055 sq. metres were sold at the rate of Rs.43.80 per sq. metre. The second Sale Deed was dated 31st January, 1990 by which 7,600 sq. metres were sold at the rate of Rs.3/- per sq. metre. The plot of the first Sale Deed dated 30th August, 1989, was situated at a distance of 200 sq. metres while the plot of the second Sale Deed was situated at a distance of about 1 km.

from the acquired property. The learned Land Acquisition Officer considered the first Sale Deed as a Sale Deed of developed plot of bharad type of land with approach road and thereafter reduced the price of the same to Rs.24/- per sq. metre being the cost of undeveloped land by taking a deduction of 45% for roads etc. and after giving an increase of 14.5% fixed the price at Rs.32.24, for the first plot and Rs.3.82 for the second plot, per sq. metre, then took an average of prices of both the plots of the said two Sale Deeds and deducting the cost of trees, fixed the rate of Rs.12/- per sq. metre as just and reasonable compensation. The other two Sale Deeds produced by the said Kamat are the very Sale Deeds dated 3rd April, 1991(Exh.AW1/D) and 7th March, 1991(Exh.AW1/C) produced by the said Applicant before the learned Reference Court. The learned Land Acquisition Officer had rejected the said Sale Deeds as being not comparable to the acquired property.

8. The learned Land Acquisition Officer as well as the learned Reference Court had referred to the Sale Deed dated 22nd February, 1978, by which the said Applicant and the said Sitakant M. Gharse had purchased their property. It is also seen from the Award that the learned Land Acquisition Officer had observed that the acquired land was also found mortgaged by the said Applicant to the State Bank of India.

9. At the hearing of this Appeal, the Respondents filed an application dated 31st July, 2004, purported to be an application under 0 41, R 27, C.P.C. seeking leave to produce (a) Sale Deed dated 22nd February, 1978 by which 1/4th of the property was purchased by the said Applicant at the rate of Rs.0.15 per sq. metre, (b) a Sale Deed dated 5th March, 1983 by which 1/4th of the said property was purchased at the rate of 0.25 per sq. metre and c) Sale Deed dated 22nd February, 1978 by which half right of the suit property was purchased by the said Sitakant M. Gharse at the rate of Rs.0.15 per sq. metre.

10. The Respondents sought leave to produce the said Award of the learned Land Acquisition Officer dated 7th December, 1993. What has been stated on behalf of the Respondents is that the said documents remained without being produced due to inadvertence. The said application of the Respondents have been opposed by the said Applicant by stating that no cause for its production at this stage as contemplated by O 41, R 27, C.P.C. has been made out.

11. In our opinion, the objection taken on behalf of the Applicant certainly deserves to succeed. O 41, R 27, C.P.C., provides for production of additional evidence before the appellate Court. Sub-Rule 1 of Rule 27 provides that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or

documentary in the appellate Court. But if –

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

12. In fact, it is nobody's case that either the said Sale Deeds or for that matter the very Award passed by the learned Land Acquisition Officer was not in existence or for that matter for any tangible reason could not be produced before the learned Reference Court. The learned Land Acquisition Officer was wholly aware of the said Sale Deeds by which the said Applicant has purchased the very property which was the subject matter of acquisition. The Award also could have been produced by the Respondents at any time before the learned Reference Court. In fact, nothing prevented them from producing the

same. Mere pleading inadvertence is certainly not a cause to be considered within the meaning of clauses (aa) of Sub-Rule 1 of R 27, 0 41, C.P.C. In the aforesaid view of the matter, we are not inclined to allow the application for production of the said documents filed on behalf of the Respondents.

13. The said Applicant, before the learned Reference Court relied upon three Sale Deeds and an opinion of an expert. The said opinion of A.W.4, Vikas Dessai, fell flat before the learned Reference Court, if we may use that expression, and Mr. Usgaonkar, learned Counsel of the said Applicant has allowed it to remain there. In other words, no grievance has been made regarding the rejection of the said opinion and the report submitted by A.W.4, Dessai by the learned Reference Court.

14. The Applicant did not examine herself but did examine her son and Attorney namely A.W.1, Ganesh Molu Dessai, who in support of the enhancement of compensation relied on three Sale Deeds namely (1) Sale Deed dated 6th January, 1989, by which a plot of about 2000 sq. metres was sold at the rate of Rs.100/- per sq. metre(Exh.AW1/B), (2) Sale Deed dated 7th March, 1991 by which a plot admeasuring 896 sq. metres was sold at the rate of Rs.150/- per sq. metre(Exh.AW1/C, and (3) Sale Deed dated 3rd April, 1991 by which a plot of 300 sq.

metres was sold at the rate of Rs.221.66 per sq. metre. The Applicant had not examined anyone to support the Sale Deed dated 6th January, 1989, but had examined A.W.2, Raghavdas Keni in support of the Sale Deed dated 3rd April, 1991(Exh.AW1/D) and A.W.3, Vinayak Fal Dessai, in support of Sale Deed dated 7th March, 1991(Exh.AW1/C).

15. The learned Reference Court came to the conclusion that there was no sufficient evidence on record to hold that the market value of the acquired land was Rs.250/- per sq. metre. However, it is to be noted that A.W.1, Ganesh Molu Dessai, claimed only Rs.200/- per sq. metre in his evidence before the learned Reference Court. The learned Reference Court further came to the conclusion that the plots of both the Sale Deeds namely dated 7th March, 1991(Exh.AW1/C) and dated 3rd April, 1991(Exh.AW1/D) were not comparable sale instances. The learned Reference Court also observed that A.W.1, Ganesh Molu Dessai, did not at all appear to be conversant with the acquired land which was mutually(sic.) jointly owned by the said Sitakant M. Gharse and the Applicant.

16. Mr. Usgaonkar, learned Counsel appearing on behalf of the Applicant has submitted that the enhancement of compensation could have been done on the basis of the Sale Deed Exh.AW1/D, that Sale Deed being proximate both in time and place. Mr. Usgaonkar, learned Counsel has

next submitted that the Applicant's land was capable of being put to construction use inasmuch as there were no legal restrictions for its development. It is the submission of Mr. Usgaonkar, learned Counsel that by taking a deduction of 1/3rd towards providing roads, etc. the price of the acquired land could be reduced and compensation be fixed.

17. On the other hand, Mr. Afonso, learned Counsel appearing on behalf of Respondent No.2, has submitted that the conclusion arrived at by the learned Reference Court that two of the Sale Deeds were not comparable could not be faulted. Regarding the first Sale Deed dated 6th January, 1989, Mr. Afonso, learned Counsel has brought to our notice that it was a Sale Deed made by one Mr. Lotlikar to a Company which was promoted by him and of which he was the Managing Director and being so, the same could not reflect a price which a willing purchaser would have paid in normal market conditions. Mr. Afonso, learned Counsel has further submitted that the price paid by the Applicant herself when she had purchased the very property which has been acquired would have reflected the correct price which could have been enhanced by taking some increase due to the passage of time.

18. Mr. Usgaonkar, learned Counsel, has placed reliance on the decisions, to which we will refer first.

(a) In the case of **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer, Poona and another**((1988) 3 SCC 751), the Supreme Court has stated that when a large block of land is required to be valued, appropriate deduction has to be made for setting aside land for carving out roads, leaving open spaces, and plotting out smaller plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by the Court having regard to the shape, size and situation of the concerned block of land and that there cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially a question of fact depending on the facts and circumstances of each case. The Hon'ble Supreme Court has also stated that the present value could be assessed on the basis of the present developed value which the land would fetch after lapse of the estimated period of development and not the present undeveloped value of the land.

(b) In the case of **Vijaysingh Liladhar** v. **Special Land Acquisition Officer**((1988) 3 SCC 760), the Supreme Court has stated that it is open to the Court to treat certified copies of Sale Deeds regarding similarly situated or neighbouring land as evidenced but the Court is under no compulsion to accept them as such. The Supreme Court has also stated that the burden is on the

State to prove the market value of land acquired by it.

(c) In the case of **Mahavir Prasad Santuka and others** v. **Collector, Cuttack and others**(AIR 1987 SC 720) the Supreme Court had observed that the High Court had held that since the appellants had purchased the land at the rate of Rs.100/- per Acre in the year 1956, they were not entitled, in any event, to compensation more than Rs.7,500/- per Acre because there was evidence on record to show that the land which was purchased in the year 1956 had no potentiality at that stage as the Industrial Area had not developed near about the land.

(d) In the case of **Land Acquisition Officer Revenue Divisional Officer** v. **L. Kamalamma**((1998) 2 SCC 385) the Supreme Court had stated that when acquisition of large chunks of land takes place sale transactions relating to smaller extent could be taken into consideration after making appropriate deductions towards development and other relevant matters. The Court also took note of the fact that there was a general trend that the prices of the land were on the rise and the judicial notice of the same could have been taken.

(e) In the case of **Bhagwathula Samanna and others**(JT 1991(4) S.C.56), the Supreme Court has reiterated the same

proposition as was earlier stated by the Supreme Court by stating that the proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold, is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted.

19. Mr. Afonso, learned Counsel, has placed reliance on decisions to which we will refer, next.

(a) In the case of **Special Tehsildar Land Acquisition** v. **A. Mangala Gowri**((1991) 4 SCC 218) the Supreme Court has observed that price received or paid in sale or purchase of the same land under acquisition within period proximate to date of acquisition is a vital evidence and exclusion of that evidence and placing reliance on award of compensation made in respect of some other land is erroneous.

(b) In the case of **Virender Singh and others** v. **Union of India**((2003) 10 SCC 86) wherein the Supreme Court

has observed that the Sale Deeds executed just before the Award was passed did not furnish real indicia of the market value of the land as the sales were effected at an advanced stage of land acquisition proceedings.

(c) In the case of **Printers House Pvt. Ltd.** v. **Satyadan** ((1994) 2 SCC 133) the Supreme Court reiterated the principle that the best evidence for determining the market value of the acquired land could be an authentic transaction of sale relating to the very acquired land or a portion thereof or any other land which could be favourably compared with the acquired land. The same would be the position when the available evidence relates to land covered by a previous award.

(d) In the case of **V. M. Salgaocar & Brother Ltd.** v. **Union of India**((1995) 2 SCC 302) the Appellant himself had purchased the land in the year 1965 at the rate of Rs.4.49 per sq. metre and there was freeze in the sale of the land till 1969. The Supreme Court, therefore, held that the District Judge was not justified in determining market value at the rate of Rs.50/- per sq. metre on the basis of small sale transactions and that the Land Acquisition Officer was right in applying the principle of interest at compound rate to the price at the rate of Rs.3.49 per sq. metre and fixed the market value at the rate of Rs.5/- per sq. metre.

(e) The case of **Shakuntalabai and others** v. **State of Maharashtra**((1996) 2 SCC 152) was a case where the very same land which was subsequently acquired was purchased in the year 1957 being 20 Acres of land, for Rs.10,000/-. The land was subsequently acquired in the year 1965. In this context, the Supreme Court observed that if there is evidence or admission on behalf of the claimants as to the market value commanded by the acquired land itself, the need to travel beyond the boundary of the acquired land is obviated (Emphasis supplied). The need to take into consideration the value of the land adjacent to the acquired land or near about the area which possessed same potentiality to work out the prices fetched therein for determination of the market value of the acquired land would arise only when there is no evidence of the value of the acquired land. In a case where the value of the acquired land itself is available on record, it is unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent lands.

(f) The case of **Special Tehshildar Land Acquisition Officer** v. **A. Mangala Gowri**(supra) was also decided on the same principle.

20. The acquired land in this case was situated in Village Balli in Quepem Taluka which is said to be at a distance of about 5 kms. from Cuncolim Police Station and

being so, it would be much further than the semi-urban area of Cuncolim proper, in Salcete Taluka. There is no dispute that the land was falling in a village where basic amenities like a Primary Health Centre, a High School, a Post Office were otherwise available within a radius of about 500 metres.

21. In our opinion, the learned Reference Court was fully justified in observing that the Applicant(A.W.1, Ganesh Molu Dessai) was not at all conversant with the acquired property. It also appears that he was also not conversant with the lands of the Sale Deeds which he produced. In fact, the evidence given by him is very sketchy and he did not substantiate the same by producing documents like a plan, Form No.I and XIV, etc. He did not know what is the total area of the property or for that matter the area of the acquired land and he has given different figures at different stages. His evidence regarding the nature of the property was unacceptable. According to him, the acquired land was a levelled land and it was fit for construction, but according to A.W.2, Keni, the Applicant's property was at a higher level as compared to his plot, and, according to A.W.3, Vinayak, Applicant's property was slopy at some places and levelled at other places and the truth could be somewhere else. A.W.1, Ganesh did not know how much of the area was covered by the paddy field and whether the area so covered

by paddy field of S.No.41/1 was at all suitable for construction. A.W.1, Ganesh did not even state as to whether the acquired property was on the eastern or western side of the National Highway proceeding from Margao to Karwar. He also did not state whether Applicant's land was more advantageously situated than that of Gharse. The Applicant had necessarily to give these details if he wanted the Court to assess the market value of his land.

22. There is no doubt that the comparable sale instance method is by far the most preferred method for the purpose of fixing compensation for the acquired land. In other words, when Courts are called upon to fix the market value of acquired land, the best evidence is the sale of the acquired land itself to which the Applicant is a party, and in absence of which, sales of the neighbouring lands which are comparable. However, before the Sale Deeds are taken into consideration, it is necessary that it must be shown that the Sale Deeds are similar to the acquired land.

23. In this context, we may refer to a recent decision of the Supreme Court in the case of **Shaji Kuriakose and another** v. **Indian Oil Corporation Ltd. and others**((2001) 7 SCC 650) wherein the Supreme Court reiterated the principle that comparable sales method of

valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of Notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are :- (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land(Emphasis supplied).

24. As far as the first Sale Deed dated 6th January, 1989(Exh.AW1/D) is concerned, the same was rightly rejected by the learned Reference Court as not being a comparable sale instance. As regards this Sale Deed,

A.W.1, Ganesh Molu Dessai, had stated that there were no trees in that plot and for that matter there was no approach road to the said plot from the highway. However, a reading of the Sale Deed Exh.AW1/D shows otherwise and it only confirms that A.W.1, Ganesh Molu Dessai, as already stated, was not only not conversant with his own property but also was not conversant with the property of Exh.A.W.1/B. Moreover, as rightly pointed out Exh.AW1/B was a Sale Deed made by the said Lotlikar in favour of a Company promoted by him of which he was a Managing Director. Such a Sale Deed cannot be taken to reflect the price a willing purchaser would pay in normal market conditions. This Sale Deed was, therefore, rightly rejected as not being a comparable sale instance.

25. Regarding the Sale Deed dated 7th March, 1991(Exh.AW1/C), the Land Acquisition Officer had stated that this land was of Survey No.53 and was bounded on one side by the Government Hospital and there was access to this plot on two sides, on one side being the said National Highway, Margao to Karwar and a tar road to the Government Hospital on the other side. It was a well developed plot with facilities like water, electricity and that due to the existence of the Government Hospital adjacent to it, a bus stop close to it, a bungalow having already existed therein, the same could not be compared with the hilly area of the same plot or the other Survey

numbers included in the acquisition. It is to be noted that A.W.3, Vinayak Fal Dessai, who was examined to support the said Sale Deed had clearly stated that he had purchased the said plot to construct shops as he had a house adjacent to the said plot. Although, A.W.3, Vinayak Fal Dessai, stated that he had purchased the said plot to build shops, it does not appear that till 1999 when he deposed before the learned Reference Court he had constructed any shops in the said plot. The learned Reference Court has rightly observed that the said plot had a special significance to A.W.3, Vinayak Fal Dessai, being very close to his own house and otherwise was purchased by him to be exploited for commercial purposes. The said Sale Deed, therefore, could not, be considered to be a comparable sale instance to determine the market value of the acquired land.

26. The third Sale Deed dated 3rd April, 1991(Exh.AW1/D) was a sale of a plot which was well levelled and abutting on two roads. This plot again as stated by A.W.2, Raghavdas Keni, was purchased by him for the purpose of constructing shops. In other words, A.W.2, Raghavdas Keni, had purchased the said plot, well located in the corner of two roads for the purpose of building shops. The fact that he did not build any shop till the year 1999 when he deposed in this case is also indicative of the fact that the village had remained as a village

with not much scope of development. This Sale Deed was also rejected as not comparable both by the Land Acquisition Officer and the Reference Court. Moreover, this Sale Deed was too close to the date of Notification and, therefore, as stated by the Supreme Court in the case of **Virender Singh and others** v. **Union of India**(supra) could not furnish real indicia of the market value. Even otherwise, in our view this small plot could not be compared by its location and nature with the property of the Applicant which was slopy or otherwise of which the exact nature was not known.

27. Once the said three Sale Deeds are taken out from consideration, the said Applicant remains without any evidence on the basis of which the Applicant could be granted enhancement. There cannot be any room for misplaced sympathies or undue emphasis solely on claimant's right to compensation because it places heavy burden on public exchequer to which everyone contributes by direct or indirect taxes. Much emphasis was placed on the case of **Land Acquisition Officer & Mandal Revenue Officer** v. **V. Narasaiah**((2001) 3 SCC 530) to say that the burden was on the State to prove the market value of the land. The said observation cannot be read out of its context. It was made in the context of admissibility of certified copies of documents. On whom the burden lies to show that the award of Land Acquisition Officer is

inadequate or that he proceeded on a wrong principle has been settled by a long line of decisions of the Supreme Court. In the case of **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer, Poona and another**(supra) the Supreme Court stated that the claimant is in the position of the plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. The same principle was reiterated in the case of **Periyar & Pareekanni Rubbers Ltd.** v. **State of Kerala**((1991) 4 SCC 195) wherein the Supreme Court stated that the burden of proving that the land is capable of fetching higher market value is on the claimant. The same principle is again found reiterated in the case of **Special Deputy Collector and another** v. **Kurra Sambasiva Rao and others**(AIR 1997 SC 2625) (3 Judges decision of the Supreme Court) by stating that the burden is on the claimant that the amount awarded by the Land Acquisition Officer is not adequate. The same principle has again been followed by the 3 Judges of the Supreme Court in the case of **Union of India** v. **Zila Singh**((03) 10 SCC 166) by stating slightly differently that the onus is on the claimant to lead evidence on determination of the market value.

28. We have already noted that this acquisition which took place was in a rural area in Village Balli where otherwise there was no development nor signs of any

development in the near or immediate future either because of the importance of the said village or because of the urbanisation of adjoining villages or semi-urban areas. In such a situation, the best evidence would have been the very Sale Deeds by which the said Applicant and the said Gharse had purchased the land, a portion of which has been acquired. Compensation could have been assessed on the basis of the said Sale Deeds by giving suitable increase in price over the years. The Applicant chose not to produce the said Sale Deeds, to which a reference has already been made and the Respondents too have now failed to produce the same before this Court.

29. For the reasons stated herein above, in our view, the learned Reference Court was fully justified in rejecting the said 3 Sale Deeds produced on behalf of the Applicant and dismissing the reference. Consequently, we hereby dismiss the Appeal. We leave to the parties to bear their own costs.

S. A. BOBDE, J.

N. A. BRITTO,J.

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